

**MINUTES
OF THE
STATE TRANSPORTATION BOARD
STUDY SESSION
9:30 A.M., Thursday, July 10, 2003
Arizona Department of Transportation
Board Room
206 South 17th Avenue
Phoenix, Arizona 85007**

The State Transportation Board met in official session for a study session at 9:30 a.m., Thursday, July 10, 2003, with Chairperson Radicke presiding. Other Board members present included: Vice Chairperson Bill Jeffers, Rusty Gant, Dick Hileman, Joe Lane and Si Schorr. Also present were Director Victor Mendez; Debra Brisk, Deputy Director; John McGee, Chief Financial Officer, Administrative Services Division; and Sam Maroufkhani. There were approximately 25 people in the audience.

PLEDGE

Chairman Radicke led the audience in the Pledge of Allegiance.

CMAQ TAC

Mr. Cupell explained it is the policy of the Board to fund with CMAQ funds, transportation projects and programs in nonattainment, maintenance and other statewide areas that reduce transportation related emissions and congestion. He said the program's goals are to improve air quality and mitigate congestion. He explained CMAQ funds are appropriated to each state DOT annually for suballocation, noting states with nonattainment or maintenance areas are required to spend CMAQ funds in those areas. He said Bullhead City and Payson have gone into maintenance and have to maintain their current efforts for 10 years in order to be brought out of nonattainment. He reported Yuma is currently very close to the standard and had a violation of the PM₁₀ standard in 2000. Mr. Cupell said a review of other state CMAQ processes found that other states suballocate funds in a competitive process, while others suballocate to regions based on a formula similar to the Federal CMAQ allocation process. He discussed emerging issues and trends, including the pending reauthorization and recent 10 year assessment of the CMAQ program. He explained, pending reauthorization, current PM₁₀ nonattainment and maintenance areas could be included in the allocation formula and at risk areas could become eligible. He said new standards, including the PM_{2.5} standard, will impact the state on a variety of issues. Mr. Cupell explained TEA-21 built on and strengthened the innovative CMAQ program introduced in ISTEA. He said the program received a 35 percent funding increase in basic authorization levels and funding eligibility was expanded with PM₁₀ nonattainment and maintenance areas

explicitly eligible to receive CMAQ funding. He stated funding, projects and conformity were identified as the three highest priority issues by CMAQ TAC members.

In response to Mr. Jeffers's question, Mr. Cupell said, if reauthorization occurs, they will have to address the haze at the Grand Canyon, including whether at least a portion of the haze actually originates in Los Angeles.

Chairperson Radicke asked for examples of projects that successfully reduced particulates. Mr. Cupell cited HOV lanes and road paving projects that drastically reduced dust. Mr. Mendez said MAG has several success stories, especially given the amount of growth that has occurred in the area. Mr. Cupell noted there has not been a violation of the Carbon Monoxide or Ozone standards in the Phoenix nonattainment area since 1995. Chairperson Radicke asked if they see a portion of the funding being spread around the state. Ms. Brisk said they will brief the board once they know more about the reauthorization and how much will be allocated. Chairperson Radicke pointed out the money is reimbursed, stating it would be difficult for smaller communities to come up with the money upfront. Mr. Cupell agreed his concern will need to be addressed when a statewide process is established.

Mr. Mendez asked where the Board would use the funding if a statewide process were established.

Mr. Gant expressed concern that rural areas would have to sacrifice less restricted funds in order to receive the CMAQ funds. Mr. McGee agreed smaller communities could lose some of their less restricted funding. He pointed out the less restricted funding could be used to pay for projects whether CMAQ funds have been allocated or not.

In response to Mr. Schorr's question, Mr. Mendez expressed his opinion that a statewide program would place more constraints on smaller areas.

MAG Regional Transportation Plan Update

Mr. Herzog presented an update to the Board regarding the MAG Regional Transportation Plan. He reported a set of transportation modeling scenarios were distributed on May 22 for a 30-day review by the State Transportation Board, ADOT, Maricopa County, and the Regional Transportation Authority. He said they have since received comments back from the reviewing entities, noting Valley Metro suggested some of the modeling techniques might have understated trends in ridership and that Scenario C went too far with transit. He stated they also felt there was a need for transit to include other infrastructure items, such as Park and Ride lots and local bus service. He said Maricopa County identified a need to provide access between the Loop 101 and Loop 303 and suggested the process consider seeking a gas tax increase to help provide for maintenance. He stated ADOT supported aggressively moving forward with the South Mountain Corridor and considering right-of-way preservation along the Loop 303 to Riggs Road. He said there was also support for the I-10 reliever and the Williams Gateway Parkway as well as right-of-way preservation on the Loop 303 along the New River alignment. He noted funding of express bus and light rail transit also received support, as did arterial funding, quality of life projects and maintenance funding.

Mr. Herzog explained the next step was to develop a hybrid plan that brought together the best features of the alternative scenarios. He said the first draft of the hybrid scenario was presented to the Transportation Policy Committee at its June 18 meeting and a refined scenario was presented to the Committee at its July 2 workshop. He acknowledged that the scenarios included some overprogramming, explaining they wanted the scenarios to be structured in a way that would allow for the greatest number of potential options. He assured the Board, however, the hybrid plan would be fiscally balanced and reflect the needs of different subareas of the region. He said, while transit has to be an important part of the hybrid plan, whether or not a local match should be a requirement for receiving operating contributions is still under discussion. He pointed out revenue and cost estimates are preliminary and will change as they proceed through the process.

Mr. Herzog reviewed the hybrid plan, stating they have a total of \$15.1 billion in regional funds, including \$8.3 billion in half-cent sales tax revenue, \$3.6 billion in ADOT funds, \$600 million in Federal Transit Funds, and \$300 million in STP monies. He said \$66 million in pavement preservation, safety and bridge projects are not detailed in the overall 20 year plan and are not included in the figures. He noted the \$8.3 billion in half-cent sales tax revenue excludes potential costs for financing bonds. He said, therefore, they have a total of \$15.1 billion in revenue over the 20 year period. He stated the half-cent sales tax revenue component of the hybrid plan provides \$4.8 billion or 58 percent for freeways, \$800 million or 10 percent for streets, and \$3 billion or 32 percent for buses, lightrail and transit. He reviewed a sampling of freeway, arterial and transit projects included in the hybrid plan.

Mr. Herzog stated the MAG Transportation Planning Committee will meet July 16 to look at the next version of the hybrid plan. He explained the goal of that meeting will be to reach concurrence on a hybrid plan. He said the approved version of the hybrid will then be sent out for a second 30-day review, noting the MAG Regional Council has to adopt the regional plan for air quality analysis by the end of September. He stated on or about January the Legislature will call for the half-cent sales tax election, which is being targeted for May 2004.

Mr. Herzog confirmed for Mr. Jeffers that, at this point, the hybrid plan identifies some money for maintenance. Mr. Jeffers expressed his opinion it would make more sense to connect the South Mountain at the Loop 303. Mr. Herzog explained the nine different connection points originally considered has now been narrowed to three alternatives. He said Mr. Jeffers' suggestion of connecting with the Loop 303 is beyond the study limits and, therefore, has not been analyzed. Chairperson Radicke agreed it would be in the tax payers' best interest to connect the South Mountain to the Loop 303 or Loop 101. Mr. Herzog suggested they schedule a work session, wherein staff can brief the board on the status of the South Mountain alignment study.

The meeting recessed for a short break.

Public Meeting Laws

Mr. Acosta stated the Attorney General's Office set up an Open Meeting Laws enforcement team in response to major violations by other entities. He said his review of the Open Meeting Laws with the Board is intended to help prevent inadvertent violations.

Mr. Acosta stated he was specifically instructed to bring ARS §38-431.09 to the Board's attention, explaining it says the public policy of the state is that meetings of public bodies are to be open as much as possible and, in case of any doubt or question of interpretation, the statute is to be interpreted to require open meetings rather than allow an executive session or otherwise closed forum. He also referred to §38-431, Number 4, stating a meeting means the gathering, in person or through technological devices, of a quorum of members of a public body. He said there has been some discussion in the Attorney General's Office about situations where one person discusses a particular issue with the majority of other members through one-on-one conversations and at what point those individual conversations collectively constitute a meeting. He urged the Board members to avoid situations that could be construed as a violation of the open meeting laws.

Mr. Acosta explained the Board produces an agenda for each meeting and is prohibited from taking legal action on any item not included on the agenda. He spoke of a situation wherein an attorney was instructed during an Executive Session to file an appeal. He explained the appeal was later deemed invalid because the decision to file an appeal was a legal action and should have occurred during the open meeting. He further clarified that, while the Board can instruct staff to research a particular issue brought up during the Call to the Public, it is prohibited from discussing or taking legal action on any item brought forward during the Call to the Public because the subject was not on the agenda.

Mr. Acosta explained Executive Sessions can be called for specific reasons as outlined under §38-431.03, including to discuss or consider legal advice, litigation and negotiations on real estate. He clarified the presence of a lawyer does not automatically make a meeting an Executive Session. He said discussions concerning how to proceed once the Board has received legal advice should be done in the public meeting. He noted there could be times when it is best not to call an Executive Session, but to ask for legal advice during the public meeting where all interested parties are present. He pointed out only those people considered necessary to conduct the Executive Session are allowed to be present.

Mr. Acosta said public access is another area where violations often occur. He explained meetings have to be set up so that people, including those with disabilities, are able to attend. He said, additionally, the public cannot be excluded from a meeting by informal means and cannot be required to identify themselves or their reason for attending the meeting prior to entering the room.

With regard to sanctions, Mr. Acosta said any action taken in violation of the Open Meeting Laws will be ratified in a subsequent meeting. He said the Attorney General or any private citizen affected can bring enforcement action to have the action declared invalid and a penalty assessed. He said a \$500 per violation penalty can be assessed, however, if the court finds that

the violation was intentional, the Board member or Board members involved in the violation could be removed from the Board.

In conclusion, Mr. Acosta encouraged the Board members to consider each situation from the standpoint of a citizen or other interested party to determine whether any violations or the appearance of any violations could be found.

The meeting recessed for a short break.

“Draft” Route Transfer Recommendations

Mr. Burnham presented the “Draft” Route Transfer Recommendations to the Board, explaining the study was initially undertaken to clarify and streamline procedures for transfer of state routes to local jurisdictions when they no longer serve a state travel need. He stated the study was conducted with advice from a Technical Advisory Committee consisting of both ADOT staff and representatives of local jurisdictions.

Mark Ford stated most of the comments made during the December 2002 and January 2003 stakeholder meetings revolved around three issues: 1) The process to be followed and the need for assurance that the Transportation Board did not intend to wholesale abandon routes for which cities and counties would become responsible; 2) The financial position of local jurisdictions makes taking on responsibility for new routes a major hardship. For that reason local agencies feel that it would be difficult to transfer many of the named routes; and 3) Issues and questions about specific routes on the preliminary list. As a result of the Route Transfer Study, Mr. Ford stated they are recommending the Board adopt the proposed revised Board Policy on Route Turnbacks and adopt the proposed priority listing of potential transfers and update the list at least every two years. He briefly reviewed the contents of the revised Turnback of State Routes Policy and the Candidate Routes for Transfer/Abandonment. He also identified other recommendations that came out of the study, including: 1) replace the Level of Development designation with System Operational Classification as a tool for determining intended future status and development needs of State Highways; 2) adopt internal procedures to assure that Senior ADOT Management and the Transportation Board are informed of potential route transfers early in negotiations and the benefits and costs to ADOT of making transfers are considered early in the negotiation process; 3) Consider setting aside limited funding during the next update of the 5-year program that would accomplish one or two top priority transfers per year; 4) consider adopting special design and maintenance standards when a through state highway serves local business (as a small town main street) and require local finance of improvements to provide local access or community amenities; 5) adopt a process for consideration of routes that local agencies believe should be transferred to the state system; and a new inventory of frontage roads, maintenance roads and spur routes should be undertaken to clarify their location and future intended use.

Copies of the revised Turnback of State Routes Policy, Candidate Routes for Transfer/Abandonment by Transfer Priority, Recommendations to the Transportation Board and Department of Transportation, and the Summary of Comments from Stakeholders Meetings were submitted for the record.

In response to Mr. Jeffers' question, Mr. Ford clarified the Wickenburg bypass should have been included. Mr. Jeffers asked what the alternative route would be if SR 77 from Milepost 396 to 408.93 were turned back to Navajo County. Mr. Ford explained that particular route was included because of its low volume and the fact that it does not provide continuity to the state system. Mr. Jeffers asked if the state would back off if local entities are not interest in participating. Mr. Ford said a policy should be adopted wherein notice will be served that they will not get anything but minimal improvements that are essential for safety. Mr. Mendez noted a statute is in place that allows the Board to turnback a facility with three or five year's notification.

Mr. Schorr asked about the process by which the Board would receive input from the local jurisdictions. Mr. Ford suggested the Board circulate the list or direct ADOT to circulate the list to the local jurisdictions and solicit their input. He recommended, however, that the Board formally adopt whatever policy goes with the list so that local jurisdictions are clear on what the Board intends to do.

Chairperson Radicke expressed his opinion ADOT should not give up continuity on any of its highways by turning portions of them back to local communities, unless a bypass has been constructed. Ms. Brisk said she believes each highway will have to be considered on an individual basis, noting there have been instances where turnbacks have worked well.

Mr. Jeffers asked if any consideration was given to turning the loops through Maricopa County over to local jurisdictions. Mr. Ford responded no, explaining, by definition, a freeway is under ADOT's jurisdiction. He pointed out the function of a road, not just the traffic on the road, has to be taken into consideration.

Chairperson Radicke asked the Board if they agree with the recommendations being presented or if modifications should be made.

Mr. Jeffers said he has no problems with the recommendations as presented, except in terms of some of the specific routes.

Chairperson Radicke expressed his opinion the point of the process is to determine whether or not there is a better alternative to get from one point to another. He pointed out most of the roads identified as candidates were identified by the local engineers.

Mr. Schorr said it appears the Board feels the policy is headed in the right direction, however, the list of candidates should be further refined.

Mr. Jeffers agreed the policy, as written, could come back for Board action relatively soon.

East Flagstaff Traffic Interchange

Sam Maroufkhani stated the JW Powell DCR was completed in September 2000 and programmed for construction in FY 2005. He reported design is currently at 95 percent and the

project is ready to go to construction. He explained the project will address operational issues by separating the ramps by approximately 500 feet at a cost of approximately \$8 million.

With regard to the East Flag TI, Mr. Maroufkhani stated the DCR was completed in July 2002 and will address numerous issues, including, pedestrian and bicycle access, operational deficiencies, merging and access, pedestrian/bicycle and vehicle conflicts, and access to the mall. He said, while \$2 million in design funding was put into the program in FY 2006, the city offered a design funding advance and design actually started in March 2003. He said cost figures were updated in June 2003 and a draft IGA was submitted to the city and county on June 30, 2003. Mr. Maroufkhani reviewed maps depicting current conditions and two alternative solutions. He reported Alternative 8A was recommended by ADOT staff, the city, the county and FMPO and negotiations and IGA approval are currently underway. He explained design has to begin soon if construction is to coincide with opening of the mall. He said the IGA asks the city to consider taking back city streets that no longer serve as state routes. He reviewed the timeline for the East Flag TI, stating they hope to complete the design and environmental process by February 2005 and begin construction in May 2005. He noted they hope to submit JW Powell for reprogramming in FY 09. A representative from the City of Scottsdale said made a comment regarding the importance of both TI's to Flagstaff and the county. He said they are concerned about the turnback proposal given their scarce resources, but remain optimistic that options for route transfers can be found that will be acceptable to both ADOT and the City of Flagstaff. He noted the mall project is estimated to return \$1.7 million annually in sales tax revenue to the city.

Mr. Jeffers asked about statistics concerning the number of people killed in the area due to the lack of walkways on the railroad. Mr. Maroufkhani was unable to provide statistics concerning the subject area, stating, however, several deaths have occurred throughout their community as a result of the lack of walkways along the railroad.

Mr. Maroufkhani said, in order for construction to coincide with that of the mall, the agreement needs to be finalized within the next month.

Chairperson Radicke expressed concern that \$2 million in district minor funds will be dedicated to a single project. Mr. Schorr asked how they will address projects throughout the rest of the district, given the amount of money dedicated to the East Flag TI. Mr. Harper said other projects will have to be delayed until the third year. Chairperson Radicke asked what is the mall developer bringing to the table. Mr. Harper said he does not know if the developer has considered a contribution to the TI project, however, they will be responsible for impact assessments determined during the traffic impact analysis.

Ms. Brisk asked if the project would be considered a priority if it were not for the mall. Mr. Harper said the TI project was a priority even before the mall project came along because traffic and pedestrian movements created a hazardous situation.

Chairperson Radicke agreed it is an important project, stating, however, he believes the developer should play a larger role.

Native American Land Ownership and Right-of-Way Process/Reimbursement Review

Mr. Hansen presented an update to the Board regarding the Native American Land Ownership and Right-of-Way Process/Reimbursement Review. He explained there are 21 federally recognized Indian Reservations in Arizona, comprised of approximately 20 million acres of land or 27 percent of the entire state. He stated most of the state's major roads cross reservation land at some point, noting most of the right-of-way for those roadways was acquired during the 1950's and 60's. He reported a current Native Indian population of about 252,000, stating each tribe has unique traditions and operates its own form of government. He stated Indian's view their legal entities as sovereign nations, having both legislative and judicial authority over their lands. He explained ownership of the land is held in a trust by the Federal Government, however, the land can be controlled either by the tribe, by a smaller community of the tribe; or by an individual. He said the state has to negotiate with the controlling entity, the Tribal Council and the Bureau of Indian Affairs when acquiring right-of-way, pointing out the state does not have ultimate authority to condemn Indian reservation land. He explained a Grant of Right-of-Way gives the state the right to build a transportation system on the land for a price. He said appraisal of land on a reservation is considerably more difficult because comparables are not available. Mr. Hansen said, prior to approaching the BIA and tribes, the state has to do an appraisal, create a legal description, create its right-of-way plans, provide construction plans, determine the statement of allotted lands, perform archeological surveys and environmental reports, and file an application. He stated, simultaneously, they begin working with tribal members to obtain support. He said the tribes have no sense of the state's timeline, resulting in a very long process. He explained, once approved by the Tribal Council, a resolution is signed and the state can typically move forward with a scheduled bid. He stated he typically discourages doing anything new on Indian reservations, explaining the state can build unrestricted in the existing rights-of-way.

Mr. Hansen explained the Indian reservations now want the state to go with a lease instead of a grant. He said the state refused to do leases because of the long term nature of the highways being constructed. He stated the reservations also want the state to leave jurisdiction of the roads in their hands. He explained, however, state statutes say the director cannot build a road over which it does not have jurisdiction.

In response to Mr. Lane's question, Mr. Hansen said the Indian reservations have not offered to contribute to roadway maintenance. He commented on the reservations' typical hesitance to offer anything additional unless it directly benefits their community. Mr. Mendez pointed out such hesitancy is present in all communities and agencies. Ms. Brisk pointed out the state has partnered with the BIA on a number of successful projects.

Adjournment

No closing comments were made.

Board Action: A motion to adjourn was made, seconded and passed unanimously.

The meeting adjourned at 1:25 p.m.

Ingo Radicke, Chairperson
State Transportation Board

Victor Mendez, ADOT Director
Arizona Department of Transportation